

SUMMARY OF ACTIONS
ALASKA BOARD OF FISHERIES
Statewide Finfish Provisions
November 12 - 17, 2003

DESIGNATED REPORTER: Sherry Wright

This summary of actions is for information purposes only and is not intended to detail, reflect or fully interpret the reasons for the board's actions.

Finfish Policies

PROPOSAL NO. 2

ACTION: Tabled to February 2004

DESCRIPTION: Provide flexibility in setting escapement goals used in the management of salmon fisheries

DISCUSSION: There was consensus within the public panel discussion that this proposal should not be passed at this meeting. Proposed changes need more discussion, and the review of this policy should continue. There was constructive debate on the science and genuine concern for conservation of salmon stocks. The board's standing Sustainable Salmon Fisheries Policy (SSFP) Committee (Jensen, chair; Bouse; and A. Nelson) will work with a public panel and division directors to draft a new proposal for the full board's consideration. A web site will be developed to share the panel's work product and to obtain further public comment on that work. The panel's work product is scheduled to be done by January 31, 2004. Members of the original public panel for Committee A at this meeting will meet during the February 2004 board meeting to consider the changes recommended by the panel and make recommendations to the full board. Regulatory action was tabled to the February 2004 board meeting.

PROPOSAL NO. 3

ACTION: Tabled to February 2004

DESCRIPTION: Provide for maximum utilization of salmon stocks

DISCUSSION: Board referenced comments made during discussion of proposal 2; this proposal will also be included in the SSFP panel's review.

PROPOSAL NO. 4

ACTION: Tabled to February 2004

DESCRIPTION: Restrict nonresidents first when implementing measures for conservation of salmon stocks

DISCUSSION: Board referenced comments made during discussion of proposal 2.

PROPOSAL NO. 5

ACTION: Failed

DESCRIPTION: Amend the salmon escapement goal policy to include consideration of economic loss to traditional users

DISCUSSION: There was some question about the definition of "traditional user group" during the discussion. The board believes that the allocation criteria sufficiently cover economic concerns. In reality, the department does not have the time and or necessary funds to gather the information needed to address this concern.

Fishing gear specifications and definitions

PROPOSAL NO. 6

ACTION: Carried

DESCRIPTION: Amend the definition of "to operate fishing gear" to include gear in the water

DISCUSSION: This is considered a housekeeping issue. The current definition of illegal fishing gear lacks language that specifically includes fishing gear that has already been deployed. Occasionally, a defendant will argue that since this language is lacking, they cannot be

charged for gear already in the water, even if it is fishing illegally. While this defense has never succeeded, it has resulted in increased court costs. The request to add suggested regulatory text would reduce conflict of the legal interpretation in the courtroom. Clarification was provided by FWP that it would not change how lost gear is handled.

PROPOSAL NO. 7

ACTION: Tabled 2004/2005 cycle

DESCRIPTION: Authorize the use of single strand nylon gillnet webbing

AMENDMENT: (c) In state waters, gillnet web must meet one of the following requirements:

- (1) the web must contain at least 30 filaments and all filaments must be of equal diameter; or
- (2) the web must contain at least six filaments, each of which must be at least 0.20 millimeter in diameter; except
- (3) in the Cook Inlet drift gillnet fishery, a person (A) may use up to 50 fathoms of a 150 fathom drift gillnet of monofilament mesh web; (B) shall report the use of monofilament gear to the department prior to its use;
- (4) for the purposes of paragraph (3) in this section, monofilament means any single filament;
- (5) if the department finds there are adverse effects by the use of monofilament gear the commissioner may close and immediately reopen the season where the use of monofilament gear is prohibited or modified; in this section "adverse effects" does not include any allocation effects;
- (6) the provisions of paragraphs (3), (4) and (5) will no longer apply after December 31, 2006.

DISCUSSION: Allowing the use of monofilament constructed gillnets may reduce the cost of nets to fishers, who in the current salmon market climate are looking at ways to reduce operating costs. The proposal would not require the use of monofilament, so fishers could continue to use their preferred gear type. Concern was expressed about the affects monofilament gear may have on marine mammals and birds. A sunset clause that requires the board to revisit this next cycle was suggested. The timeframe between the board cycles would allow fishers to try the gear and report back to the board. Because this is a statewide proposal, and areas other than Cook Inlet opposed this, the board discussed allowing the use of monofilament area by area, rather than allowing it statewide. Since the board's legal notice did not specifically cover the Cook Inlet region, the board defer this proposal to the 2004/2005 meeting cycle where Cook Inlet issues will be considered.

PROPOSAL NO. 8

ACTION: Failed

DESCRIPTION: Amend the definition of a drift gillnet

DISCUSSION: Discussion concerning the requirement to "drift in common" would be very difficult because of the number of types, construction methods, lengths, depths, and other differences in gillnets used throughout the state. This would be unenforceable by FWP. Term "drift in common" would need to be defined. This was considered a Bristol Bay issue and if pursued, could be dealt with on a local basis.

PROPOSAL NO. 9

ACTION: Failed

DESCRIPTION: Amend the definition of a drift gillnet

DISCUSSION: The change in the proposed language would allow drift gillnets to be in a fixed position as long as they were not permanently fixed at both ends. Therefore, if a gillnet went dry on one end, it would not be considered a set gillnet. This would benefit drift fishers, who go dry while drifting, as they would not be cited as a set gillnet fisher. It was noted that this is a statewide proposal and far too reaching if only intended or applicable in certain areas. Also, removing the language "intent" from the current regulation would be problematic to enforce the proposed regulation. Most of the discussion revolved around the meaning of "intent" and was explained that one has to intend to anchor one end, using an anchor or other methods to

permanently affix one end of the net. If a fisher goes dry, or hangs up on a rock, then this is not intentional.

Roe reporting

PROPOSAL NO. 10

ACTION: Carried as amended

DESCRIPTION: Require fishermen selling salmon roe to report it on a fish ticket

AMENDMENT: Add language for delivery condition code of salmon by species and pounds and delivery condition code of salmon roe by species to 5 AAC 39.130.

DISCUSSION: The sale of roe has been increasing in several areas in recent years and this proposal would provide a better accountability of the harvest, no matter how the fish or its roe may be sold, especially when allocations issues arise. It may also be easier to document and enforce wanton waste. Fisheries have been evolving and because of this, better accountability of the harvest is necessary. There was a general discussion concerning tax issues and whether this proposal would affect the taxes that fishers or processors have to pay. Tax policies are set by the Department of Revenue and this proposal would have no affect.

Developing Fisheries Policy

PROPOSAL NO. 11

ACTION: Tabled indefinitely

DESCRIPTION: Establish a developing fisheries policy

DISCUSSION: At the October work session, the department notified the board of its request to withdraw this proposal. Board formally approved the request at this meeting. Tabled until the department can have more discussion among stakeholders and submit a new proposal.

Personal Use Fishing

PROPOSAL NO. 12

ACTION: No action

DESCRIPTION: Amend harvest reporting requirements

DISCUSSION: The board honored the department's request to withdraw the proposal.

PROPOSAL NO. 13

ACTION: Failed

DESCRIPTION: Amend eligibility requirements for personal use permits

DISCUSSION: The personal use fishery is currently managed and funded by Sport Fish Division. If this proposal was accepted, there would be no way to compensate the management agency for those costs associated with managing the personal use fishery. Sport fishing licenses are used as an affidavit to determine the one-year required state residency. Nonresidents by law cannot participate in personal use fisheries. There was also concern that allowing personal use permits to be obtained without some type of fee would not be beneficial to the state, as funds are also spent to protect the habitat. One option addressed would be to set up a similar permitting system and fees similar to the current sport fish license requirements. However, this would require legislative action and is outside of the board's authority.

Emergency Order Authority

PROPOSAL NO. 14

ACTION: Carried as amended

DESCRIPTION: Modify the department's emergency order authority for consistency with the sustainable salmon fisheries policy and the escapement goal policy

AMENDMENT: Remove the lower limit of the escapement range language from EO authority, remove the optimum escapement goal by 25 percent or the upper limit language, exchange the term "goal" for "range" in 5 AAC 75.003.

DISCUSSION: Proposal makes sport fish EO authority consistent with the sustainable salmon policy and escapement goal policy. Public panel voiced concern with respect to liberalizing

harvests when the lower range of the escapement goal is just met. Current language makes it difficult to liberalize fisheries with very large escapements because emergency orders cannot be issued until at least 125 percent of the upper range of the escapement goal is projected to be met. EO authority to liberalize harvest would be used conservatively in relatively few instances; for example, in 2003 the existing authority was used only in seven cases statewide. This is a housekeeping proposal that provides guidance to the department.

PROPOSAL NO. 15**ACTION: Carried as amended**

DESCRIPTION: Allow collection of biological information by department staff before fish are processed in the field

AMENDMENTS: For purposes of data collection to improve harvest or stock assessment, or for purposes of improved enforcement of bag and size limits, the commissioner or an authorized designee may establish, by emergency order, areas and times in which anglers may not fillet, mutilate, or otherwise disfigure specific species of fish in a manner that prevents species identification, examination of the adipose fin of salmonids, recovery of tags, or determination of length, sex, or age, until the fish are brought to shore and offloaded from a vessel or removed from a shoreline fishing site. The commissioner or authorized designee may also require that certain parts of a fish still be attached for purposes of species identification or data collection. However, during these time periods, an angler may gill and gut these fish before they are brought to shore and offloaded from the vessel or removed from a shoreline fishing site. This authority does not apply to fish preserved or consumed aboard a vessel. Repeal both 5 AAC 47.030(h) and 5 AAC 47.060(c).

DISCUSSION: This proposal will improve sampling programs statewide; successful sampling ensures proper resource management. The proposal also improves enforcement ability. Discussion occurred over what constituted "preserved or consumed." Staff read the regulatory definition and noted that frozen and canned fish meet the definition. Therefore this authority, when used, would not apply to frozen and canned fish, and will only be implemented where needed for biological sampling or for enforcement reasons. Concern for increased congestion at onshore processing areas was addressed. While there may be a slight inconvenience, it will be worth the data gathered. Public will be adequately informed when an EO is released. Staff described expected outreach efforts and noted that a similar authority in place in Southeast Alaska has been used successfully without widespread communication problems.

Guides**PROPOSAL NO. 16****ACTION: Failed**

DESCRIPTION: Prohibit guides from fishing when clients are present

DISCUSSION: The board found this proposal too broad, and stated that the issue should be addressed on an area-specific basis. Teaching fishing technique is an important part of guiding, especially when fly fishing. It would be difficult to enforce who is teaching and who is simply fishing. The board decided that the current regulations concerning actions of guides are adequate.

PROPOSAL NO. 17**ACTION: Failed**

DESCRIPTION: Repeal existing sport fishing business and guide registration programs

DISCUSSION: The current system of registration is simple with the benefits of registration far outweighing any negative aspects, such as multiple family members being falsely registered. A guide could send in license as proof of guiding to prevent false registrations. The current system is not perfect but provides a good indication of effort.

Trout and Char

PROPOSAL NO. 18

ACTION: Failed

DESCRIPTION: Create a Dolly Varden sustainable management policy

DISCUSSION: The board adopted the wild trout policy during the last meeting cycle. The department recommends postponing the adoption of any new statewide policies until the existing salmon and trout policies can be evaluated. Some upper Kenai River residents believe Dolly Varden should be on the same platform as trout, and have concern of overharvest. There are no conservation concerns with Dolly Varden at this time. Board believes most people treat Dolly Varden like trout with more catch-and-release involved and less actual harvest.

PROPOSAL NO. 19

ACTION: Failed

DESCRIPTION: Amend the existing wild trout sustainable management policy

DISCUSSION: Board will not change a policy before it has had time to be proven.

PROPOSAL NO. 20

ACTION: Failed

DESCRIPTION: Create river corridor or watershed conservation measures on significant trout streams

DISCUSSION: The public panel discussed whether other language should be used instead of the term "sanctuary." Clarification of the proposal: the board would not establish the corridor area, but would set-up the process by which corridor proposals could be handled. Need a process to outline procedures when both water and land are involved with proposed corridors. Department of Law recommends that the Board of Fisheries stay within its authority. Including designations for both land and water would require action by both the Board of Fisheries and the Board of Game. However, the Board of Fisheries has authority to establish specific fishery areas in waters under its jurisdiction. Any designation would be subject to legislative approval. Department of Natural Resources has the authority over setting in stream flow appropriations. The board does not have authority to designate instream flow.

Other Sport

PROPOSAL NO. 21

ACTION: Carried as amended

DESCRIPTION: Require presentment of fishing gear to department staff upon request

AMENDMENTS: A person must present for inspection to a peace officer any fish taken or possessed by the person in a sport fishery. Upon request by an employee of the department or a peace officer of the state, a person, while taking fish, must present for inspection any apparatus designed to be, and capable of being, used to take fish in a sport fishery.

DISCUSSION: A change is needed to allow department staff to require gear to be shown, as well as to a peace officer when requested. At present, there is no requirement to present fishing gear to a department employee or peace officer, and problems have occurred where anglers cut the line to avoid a citation. Adding this language to sport fishing regulations would provide law enforcement with a means to enforce illegal gear use. Proposal applies only to sport fishing regulations. Clarification was provided that this does not include gear in a tackle box; only illegal gear that is actively in use. "Any fish" taken language, along with the remainder of the present regulations, has been present since statehood.

PROPOSAL NO. 22

ACTION: Carried as amended

DESCRIPTION: Allow certain sport-caught fish to be used as bait in saltwater

AMENDMENT: Sport caught fish taken in saltwater of a regulatory area for which bag limits, seasons, or other regulatory methods and means for that species are not provided in 5 AAC

47—70, may be possessed, transported, and released into saltwater of the same regulatory area they were taken in, as live bait.

DISCUSSION: Clarifies that species currently allowed to be used as bait may also be used as live bait in saltwater. Board provided additional clarification that its intent is to allow unused bait to be returned to the water alive.

PROPOSAL NO. 23

ACTION: Carried as amended

DESCRIPTION: Prohibit the use of a gaff on fish intended to be released

AMENDMENT: A gaff may not be used to puncture the flesh of any part of a fish during a closed season for that species, of any fish that is not of legal size, or of any fish that is subsequently released. All fish landed with a gaff must be retained as part of the angler's bag and possession limit. A gaff is any hook that is not attached an angler's fishing line.

DISCUSSION: Concern that using a gaff to release fish caught with jay-hooks would become illegal. This proposal would not prevent the use of gaffs from twisting hooks out as long as the gaff does not puncture the fish. Concern expressed that a person could still harpoon and then release a fish under the proposed regulation; however, board believes that this is unlikely to occur. There is currently a problem with the use of gaffs.

PROPOSAL NO. 24

ACTION: Carried as amended

DESCRIPTION: Extend statewide sport fish provisions into all waters of the Exclusive Economic Zone (EEZ)

AMENDMENT: The regulations in this chapter, except those that apply specifically to freshwater fishing, also apply in the adjoining waters of the EEZ.

DISCUSSION: Clearly applies statewide sport fishing regulations in the EEZ. Sport fishing regulations for each area apply in adjoining areas of the EEZ; however, statewide regulations currently do not. Opposition focused on a concern for extending state powers to federal waters. Department of Law explained that federal regulations allow for this type of regulation.

PROPOSAL NO. 25

ACTION: Carried as amended

DESCRIPTION: Provide for methods and means disability exemptions.

AMENDMENT: (a) A person with a disability, or the personal representative of a person with a disability, may submit an application on a form available from the department for an exemption from a method and means requirement specified in 5 AAC 47-75. The application must

- (1) include a signed statement from a licensed physician explaining the nature and extent of the person's disability;
- (2) specifically identify the methods and means limitation at issue and the type of exemption requested;
- (3) include a statement by the person with a disability that explains the causal relationship between the disability and the requested accommodation, or how the regulation at issue prohibits meaningful access to a program, service, or benefit; and
- (4) be submitted at least 30 days before the requested effective date of exemption unless the exemption is being requested as a result of an emergency order or emergency regulation.

(b) The department shall issue a special authorization in writing that grants the requested exemption or an alternative exemption, if it determines that the exemption would provide a person with a disability with meaningful access to the program, service, or benefit in question, and meets the standard set out in this section. In granting the exemption, the department may include any conditions it determines are reasonable to conform the exemption to existing conservation and management objectives. In considering whether to grant the exemption, the department may consider, among other factors whether the exemption would

- (1) fundamentally alter a program, service, or benefit of the department;
 - (2) place an undue administrative burden or expense on the department;
 - (3) have an unreasonable impact on the conservation, development, or utilization of fish; or
 - (4) constitute an unreasonable risk to public health or safety.
- (c) The department may require a sport fisherman who receives an exemption under this section to be accompanied by another licensed or permitted sport fisherman.
- (d) The department will not authorize an exemption under this section if
- (1) the regulation does not substantially prohibit the person from meaningful access to the program, service, or benefit;
 - (2) the authorization would allow an exemption or modification to seasons or bag limits; or
 - (3) the Board of Fisheries has previously reviewed and acted on the same request for an accommodation.

DISCUSSION: This proposal applies disability exemptions statewide that are currently in place on the Kenai Peninsula for sport fishing. It would also be consistent with similar exemptions in hunting regulations. Department of Law supports this proposal; it would create a statewide ADA-compliant regulation. Board added clarification that a person would never be allowed to fish in closed waters. This proposal is limited to methods and means and exemptions would be granted only when certain requirements, outlined in substitute language, are met.

PROPOSAL NO. 26

ACTION: Carried as amended

DESCRIPTION: Modify definition of freshwater sport fishing gear

AMENDMENT: Attractors (beads), when used with a fly, lure, or bare hook, must be either fixed within two inches of the fly, lure or bare hook, or be free sliding on the line or leader. For the purposes of this section, a bead not attached to the hook is an attractor, not a fly.

DISCUSSION: The new regulation would add "bare hook" to clarify the terminal gear most often used with a bead, and apply the regulations statewide that are currently in place on the Kenai Peninsula and in Bristol Bay, to bring clarity and uniformity. Beads are utilized for easier release of fish, also to help reduce debris from the line. FWP recommended use of a bead of clear color, so there could be no misunderstanding of use of the bead as an attractor. Context of the use is where beads are used to look like salmon eggs.

PROPOSAL NO. 27

ACTION: No action

DESCRIPTION: Allow children to use bait in freshwater

DISCUSSION: The board lacks authority to adopt this regulation.

PROPOSAL NO. 28

ACTION: Failed

DESCRIPTION: Prohibit anchoring when fishing for halibut if it interferes with other fisheries

DISCUSSION: The board lacks authority to prohibit vessels from anchoring. International Pacific Halibut Commission would have to adopt this regulation first. There is also an enforcement concern. There may be a problem with proposing only for halibut and not other sport fish. This was determined to be more of a local issue, rather than a statewide problem.

PROPOSAL NO. B

ACTION: Carried as amended

DESCRIPTION: Retention of fish taken in commercial fisheries for noncommercial use

AMENDMENTS: A person engaged in commercial fishing may retain finfish from lawfully taken commercial catch for the person's own use, including use as bait in a commercial fishery, but not for sale or barter.

DISCUSSION: This proposal seeks to clarify commercial fish retained for noncommercial use only. Customary trade does not apply. It is not the intention to prohibit commercial fishermen from using catch as bait; nor does it affect their ability as a catcher-processor.

Southeast Alaska

PROPOSAL NO. 253

ACTION: Carried as amended

DESCRIPTION: Adjust salmon troll fishery season to help trollers access hatchery chinook

AMENDMENT: Allows the department to manage the fishery for periods, or until the guideline harvest is reached; whichever occurs first and clarifies that the spring fisheries begin no later than May 1.

DISCUSSION: At the 2003 Board of Fisheries meeting in Ketchikan, regulations were instituted to increase opportunity to harvest a surplus of hatchery kings because the GHL was not being met. Intent of the board's previous actions was to allow harvest of hatchery surplus. This past winter, the GHL was achieved prior to the current closure date. Having a floating date would provide flexibility to open the spring fishery early when the winter GHL is harvested.

PROPOSAL NO. 254

ACTION: Carried as amended

DESCRIPTION: Create a new subsection dealing with dual permit holders fishing concurrently in Area A

AMENDMENT: Before a vessel registered for both the golden king crab and Tanner crab fisheries may fish for golden king crab in areas closed to Tanner crab (1) the vessel must have all Tanner crab removed from the vessel; (2) must unregister to fish for Tanner crab by signature of the vessel owner, agent or permit holder; (3) once a permit has been unregistered for Tanner crab, Tanner crab may not be retained or sold. A vessel registered to fish for only golden king crab must remove all gear from the closed Tanner crab area before registering to fish for Tanner crab.

DISCUSSION: This proposal creates an enforceable closure of core Tanner crab areas to Tanner crab fishing but allows golden king crab fishing to continue. Eliminates need for department to close golden king crab fishing for closures in the Tanner crab fishery. Allows department to continue experimenting with core area management with less conflict and without displacing golden king crab fishermen.

MISCELLANEOUS BUSINESS

PWS Allocation Plan Workgroup

Members of the panel were selected to serve as follows: Leroy Cabana, Kory Blake, Beaver Nelson, Al Whaley, George Covell, John Bocci, E.J. Cheshier, Hap Symmonds, Jason Wells.

Sitka Open Pound Herring Workgroup

Members of the panel were selected to serve as follows: Alan Otness, Larry Demmert, Eric Rosvold, Beaver Nelson, Gary Olson, George Bennett, Sr., Jerry Dahl, John Carle, Ben Johnson, John Baird.